

By filing this application under article 227 of the Constitution of India, the petitioner has challenged the order dated 02.08.2014 passed by learned Munsiff Kamrupfi Amingaon in T.S. No. 49/2014 whereby the prayer of the petitioner to cross-examine of his witnesses may be allowed has been rejected by the Court.

2. It is submitted that on 04.10.2013, date was fixed for cross-examination of all the witnesses of the petitioner's side. However, the petitioner and his witnesses as well as learned counsel were found absent on the date fixed and the refore, cross-examination-in-chief of the witnesses filed in the suit was expunged and the matter was fixed on 21.11.2013 for argument.

3. it is submitted by the learned counsel for the petitioner that the petitioner and his witnesses remained absent due to wrong posting of the case in the diary of the advocate concerned. Therefore, on 08.10.2013 on of-date, the advocate conducting the suit on behalf of the petitioner/plaintiff filed the petition under Section 151 of CPC which has been rejected vide impugned order. It is submitted by the learned counsel for the petitioners that while passing the impugned order the learned trial Court never considered the entire aspect of the matter and mechanically passed the order whereas, there was no willfull neglect on the part of the petitioner. On 20.09.2013, three witnesses of the plaintiff/petitioners side were present before the Court but the respondent/defendant prayed for adjournment which was allowed by the trial Court whereas, the trial Court has observed that the petitioner has prayed for adjournment on 20.09.2013.

4. The learned trial Court disbelieved the ground that after wrong posting of the date in the diary of the concerned advocate, showing cause of non-appearance of the plaintiff's witnesses on 04.10.2013. Prior to 04.10.2013, the witnesses of the petitioner/plaintiff never failed to attend the court. Whereas, the defendant respondent sought for adjournment on four occasions. The trial Court not only rejected the petition filed by the petitioner but also imposed a cost of Rs.500/ upon the petitioner.

5. Learned counsel appearing on behalf of the respondent has raised a preliminary objection as regards the maintainability of the petitioner under Section 151 CPC. It is submitted by the learned counsel for the respondent that power under Section 151 CPC can be exercised only when there is no specific provision in the CPC and therefore, the trial court rightly rejected the petition filed by the petitioner. Moreover, this Court under article 227 of the Constitution of India may not entertain the application when there is specific provision under the CPC.

6. The learned counsel has relied on the case of Nain Singh Vs. Koonwarjee and Ors 1970 1 SCC 732 wherein it has been held that under inherent power of courts recognized by section 151 CPC the Court has no power to do that which is prohibited by the Court/inherent jurisdiction of the Court may not be exercised subject to the rule that if the Court does not contain specific provision which would meet the necessities of the case such provision should be followed and inherent jurisdiction should not be invoked. Further the power under Section 151 of the Code can not be exercised as an appellate power.

7. It appears from the impugned order that the petition filed by the petitioner was not rejected on the ground that the petition is not maintainable under section 151 of the Code. The trial Court disbelieved that the witnesses of the petitioners side failed to appear on the date fixed on the ground that there was wrong posting of date by the concerned advocate. Only because the petition was filed by the learned advocate quoting section 151, the parties to the suit should not suffer. On perusal the orders from 16.07.2012, 01.08.2012 and 24.08.2012 and other subsequent orders it appears that the petitioners and his witnesses were present on several dates. The matter was twice refer to mediation. However, the mediation failed. Thereafter, the adjournment were allowed on the petition filed

ed on behalf of the respondent side. Only on 04.10.2013 the petitioner and his witnesses remained absent without any steps and the evidence of the petitioners side was expunged.

8. In view of the circumstances, the impugned order dated 02.08.2014 whereby the prayer of the petitioner to allow the witnesses to be cross-examined has been rejected by the trial Court and is set aside. Consequently, the order dated 04.10.2013 whereby, the evidence of the petitioner side has been expunged is also set aside and vacated. The petitioner is directed to appear before the learned trial Court and the trial court shall fix a date for cross-examination of the witnesses of the petitioner side and to dispose of the suit in accordance with law.